

Selected Documents from Claim File
Claim No. LRF-2001-0927-01 & -02

Claim Amt. : \$3,379.24 Initial Entry Date : 09/27/2001

Claimant : Whitewater Whirlpool Baths & Systems

Property Desc. : See Comments

Property Addr. : 109 Hillsborough Dr

Pleasant View, UT 84414

STATUS : PENDING (SECTION REVIEW)

Comments Page: 001 UserID: kschwab

Lot A64, Pleasant Meadows

Associated Addresses

Type : Claimant Legal Counsel

DOPL # : - -

Firm Nm :

Name : Dr Howard Chuntz

1149 W Center St

Orem, UT 84057

(801) 222-9700

Type : Claimant Address

DOPL # : 00-235825-5501

Firm Nm : Whitewater Whirlpool Baths & System

Name : Kirk Williamson

195 S Geneva Rd

Lindon, UT 84042

(801) 785-3554

Type : Home Owner - Secondary

DOPL # : - -

Firm Nm :

Name : Gwen Fellows

109 Hillsborough Dr

Pleasant View, UT 84414

() -

Type : Home Owner - Primary

DOPL # : - -

Firm Nm :

Name : Ray Fellows

109 Hillsborough Dr

Pleasant View, UT 84414

() -

Type : Non-Paying Party - Primary

DOPL # : 00-353159-5501

Name :

Salt Lake City, UT 84101

()

DOPL # : 00-353159-5501

Name :

Salt Lake City, UT 84101

()

Claim #: LRF-2001-0927-01 Claimant: Whitewater Whirlpool Baths & S

Claiming Capacity:	Subcontractor
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Entity Type:

===== CLAIMS PROCESSING INFO =====

	Date Received	Date Forwarded
Front Desk	09/27/2001	
LRF Special-Setup, Filing, CRIS	10/03/2001	
Permissive Party Response	11/27/2001	DEADLINE*****

Comments Page: 001 UserID: kschwab

Certified to Brandenburg: 7000 1530 0004 7602 3819

Screen C/D Letter	11/21/2001	
Claimant Response C/D Letter	12/12/2001	01/18/2002
Substantive Review	12/17/2001	

Comments	Page: 001	UserID: chris
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From the information included in the claim, the complaint filed by the claimant was beyond the 180 day deadline when the last date of qualified services were performed. From the invoices included the last date of qualified services was 4/11/00, and the complaint was filed on 12/21/00. This equals 254 days.

Claim Disposition			Deny
Comments	Page: 001	UserID: chris	
Claim is incomplete for the following reasons:			
1.Claim has a jurisdictional flaw and does not meet the 180 day deadline where the civil action was filed within the timeline of last performing the qualified services. See jurisdictional checklist for complete explanation.			
2. The Motion and Order for Supplemental Proceedings was issued and served on 5/15/01, and 6/12/01. The judgment the claimant received against the nonpaying party was entered on 9/10/01. See Required Factual Findings for explanation.			
Board Disposition			***
JURISDICTIONAL CHECKLIST =====			
Completion Of QS	04/30/2000		
Civil Bkcy Filing	12/21/2000		
Difference	235		
Comments	Page: 001	UserID: chris	
Claimant has conclusively demonstrated that the complaint was filed December 21, 2000. Therefore, to qualify for payment, the claimant must have last provided services on or before June 24, 2000.			
From the invoices included the last date of qualified services was 4/11/00, (although there is mention of invoice number 745094 dated on this residence as 4/30/00) and the complaint was filed on 12/21/00. Regardless of whether the invoice date was 4/11/00 or 4/30/00 the qualified services were performed at least 235 days from when the complaint was filed on this property.			
Claimant asserts July 3 as the last date of qualified service and supports that assertion by referring to the judgment findings. Those findings read, in relevant part:			
"4. Brandenburg contracted with plaintiff for plaintiff to provide building materials and labor on each of said premises and agreed to pay plaintiff as follows:			
a. The sum of \$2,563.97 on or about the 3rd day of July 2000, for the Fellows property;"			
"5. Said materials and labor were delivered and performed by plaintiff on each of the premises and were accepted by each of the defendants."			
The Fund believes a careful reading of this will obviate that the court found that the payment was due on July 3 but entered not finding whatsoever as to when the qualified services were actually provided.			
The Fund recommends denial of this claim because this deadline has not been met and claim has a jurisdictional flaw.			
Civil Judg/Bkcy Filing	09/10/2001		
Page: 3			

LRF App Filing	09/27/2001		
Difference	17		
Comments Page: 001 UserID: chris			
Judgment included in claim to show the date the judgment was entered, and the claim filing date was well within the 1 year deadline.			
===== COMPLETE APPLICATION CHECK-LIST =====			
Form Submitted	Yes	09/27/2001	
Form Completed	Inc	12/17/2001	
Fee	Yes	09/27/2001	4244-1 - ICN
Signed Cert/Aff	Yes	09/26/2001	
Cert of Service	Yes	09/26/2001	
Demog. Questionnaire	Yes	09/27/2001	
===== SUPPORTING DOCUMENTS =====			
Written Contract	Yes	Civil Finding	09/10/2001
Licensing Statute	Yes	License	05/12/1998
Full Payment	Yes	Civil Finding	09/10/2001
Civil Action/Bankrupt	Yes	Complaint	12/21/2000
Entitlement to Pmt.	Yes	Civil Judgment	09/10/2001
Exhaust Remedies	Yes	SO/RS/WE/RE	09/10/2001
===== REQUIRED FACTUAL FINDINGS CHECK-LIST =====			
Claimant Qualified Beneficiary	Yes		
Comments Page: 001 UserID: chris			
Claimant is active with the Fund and has been since 7/17/95.			
Written contract exists	Yes		
Comments Page: 001 UserID: chris			
The Findings of Fact and Conclusions of Law included in the claim does state that there was a written contract between the original contractor and the homeowner, but the Fund does not have a signed copy from the Judge of these Findings.			
Original Contractor Licensed	Yes		
Comments Page: 001 UserID: chris			
Original contractor's license was active from 5/12/98 to 7/31/01 with license # 353159.			
Owner PIF to Contractor	Yes		
Comments Page: 001 UserID: chris			

The Findings of Fact and Conclusions of Law included in the claim does state that the homeowner paid Brandenburgin full for the sums due on the original contract between this defendant and all sums due on any amendments to said contract, but the Fund does not have a signed copy from the Judge of these Findings.

Residence Own/Occ as defined Yes

Comments Page: 001 UserID: chris

Per owner occupied residence affidavit signed by the homeowner included in the claim.

Residence Single Family/Duplex Yes

Comments Page: 001 UserID: chris

Per owner occupied residence affidavit signed by the homeowner included in the claim.

Contract For QS Yes

Comments Page: 001 UserID: chris

Invoices included in this claim show that the claimant provided materials to the NPP for this specific residence.

Claimant brought Civil Action Yes

Comments Page: 001 UserID: chris

Judgment was included in the claim verifying the claimant did obtain judgment against the NPP, but this judgment also needs to be signed by the judge.

Exhausted Remedies Inc

Comments Page: 001 UserID: chris

A Motion and Order for Supplemental Proceedings against the NPP was included in the claim and it was issued 5/25/01. Also included was the Constable's proof of service that this was served on the NPP on 6/12/01. All of this was done before the date the judgment was entered (9/10/01). In reference to R156-38-204a (6) (a): "A copy of a supplemental order issued following the civil judgment entered in favor of claimant and a copy of the return of service..." This information was not issued following the date of the civil judgment, but was in fact issued about 3 months prior to the judgment date.

Adequate \$ in LRF Fund Yes

Statutory Limit/Payment no

Comments Page: 001 UserID: chris

Claims paid on this residence to date: \$0.

Un-reimbursed Payments		no
Comments	Page: 001	UserID: chris
To date Fund has paid \$0 of claims on behalf of claimant and has received \$0 of reimbursements.		
===== PAYMENT CHECKLIST =====		
	Apportioned %	Claimed
	100.00	
Principal Amount	0.00	2,563.97
Pre Attorney Fees	0.00	304.50
Pre Costs	0.00	57.40
Pre Int. % 0.00	0.00	57.40
Post Attorney Fees	0.00	150.00
Post Costs	0.00	119.00
Post Int. % 0.00	0.00	0.00
Total	0.00	3,423.24
QUALIFIED SERVICES COMMENT		
Comments	Page: 001	UserID: chris
Judgment awarded to claimant against NPP in the gross amount of \$12,396.13. The amount for this specific residence was outlined in the Findings of Fact as well as a matching invoice.		
PRE JUDGEMENT ATTORNEY FEE COMMENT		
Comments	Page: 001	UserID: chris
The total amount of attorney's fees awarded in the judgment was \$1,522.50. The fees for this property were allocated according to the qualified services amount (see attached allocation schedule).		
PRE JUDGEMENT COSTS COMMENT		
Comments	Page: 001	UserID: chris
The total amount of costs awarded in the judgment was \$287.00. The costs for this property were allocated according to the qualified services amount (see attached allocation schedule).		
PRE JUDGEMENT INTEREST COMMENT		
Comments	Page: 001	UserID: chris
Interest calculated at 12% pursuant to UCA 38-11-203 (3) (c). Payment due date on original invoice was 5/11/00. Interest begins this date and runs until first conditional denial letter was sent out on 11/21/01.		
POST JUDGEMENT ATTORNEY COMMENT		
Comments	Page: 001	UserID: chris
Page: 6		

The post judgment attorney fees have been documented and included in the claim. The amount claimed is for the preparation of the application.

POST JUDGEMENT COSTS COMMENT

Comments Page: 001 UserID: chris

The post judgment costs have been documented and included in the claim. The amount claimed (\$44.00) is for the Service of Process on the Supplemental Order, and the other \$75.00 is the filing fee with Lien Recovery. According to 38-11-203 (d) " . . .The claim application fee as established by the division pursuant to Subsection 38-11-204 (1) (b) is not a reimbursable cost." The \$44.00 is allocated among the three properties (see attached allocation schedule).

POST JUDGEMENT INTEREST COMMENT

NO Disposition Checklist Information

Page: 7

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF THE LIEN RECOVERY:	ORDER
FUND CLAIM OF WHITEWATER	:
WHIRLPOOL BATHS & SYSTEMS, INC.	:
("CLAIMANT") REGARDING THE	:
CONSTRUCTION BY BRANDENBURG	:
DEVELOPMENT & CONSULTING, LLC	:
("NONPAYING PARTY") ON THE	:
RESIDENCE OF RAY & GWEN FELLOWS	:
("HOMEOWNER")	:

Pursuant to the requirements for a disbursement from the Lien Recovery Fund set forth in UTAH CODE ANN. § 38-11-203(3) (2001) and being apprized of all relevant facts, the Director of the Division of Occupational and Professional Licensing finds that the claimant has not complied with the requirements of UTAH CODE ANN. §§ 58-1-301(2)(d) (1997) and 38-11-204(3)(c)(i)(A) (2001).

This claim was originally filed on September 27, 2001. On November 21, 2001 the Division completed its first review of the claim. That review found several deficiencies in the claim. Therefore, the Division issued a Notice of Incomplete or Insufficient Claim Application outlining the defects in the claim and giving Claimant until December 21, 2001 to correct those defects. On December 12, 2001 the Division received Claimant's response to the Notice. The Division reviewed Claimant's response to the Notice and found the response did not cure all of the defects with the claim. Therefore, the Division issued a second Notice outlining the remaining deficiencies and granting

Claimant until January 18, 2002 to respond. Both Notices included the following warning:

Failure to Provide Required Information: If we receive the needed information, we will process your claim as expeditiously as possible. If we do not receive the needed information, on or before the Response Due Date shown above the claim will be denied. (emphasis as in original)

As of January 22, 2002 the Division has received no response from Claimant with respect to the second Notice.

The Division's Notices include firm response deadlines as a means of ensuring compliance with UTAH CODE ANN. § 58-1-301(2)(d), which reads:

A written notice of incomplete application and conditional denial of licensure shall be provided to an applicant who submits an incomplete application. This notice shall advise the applicant that the application is incomplete and that **the application is denied, unless the applicant corrects the deficiencies within the time period specified in the notice** and otherwise meets all qualifications for licensure. (emphasis added)

While a claim against the Fund is not, technically, an application for licensure the principle of judicial economy strongly encourages the Division to process claim applications in a manner indistinguishable for the processing of licensure applications.

To do otherwise would impose upon the Division redundant processes and excess expenses that could not be justified. As such, this section clearly applies to the processing of claims against the Fund. Therefore, because Claimant did not respond to the second Notice the claim the conditional denial of the claim is rendered final.

Because Claimant did not respond to the second Notice, the claim retains unresolved defects. Specifically, Claimant has failed to demonstrate compliance with Utah Code Ann. § 38-11-204(3)(c)(i)(A), which reads:

To recover from the fund, . . . a qualified beneficiary shall establish that . . . the qualified beneficiary filed an action against the nonpaying party to recover monies owed him within 180 days from the date the qualified beneficiary last provided qualified services, unless precluded from doing so by the nonpaying party's bankruptcy filing within the 180 days after completion of services. (emphasis added)

The claim documents present two possible dates as the "date the qualified beneficiary last provided qualified services." The earlier date is April 11, 2000; the latter is July 3, 2000. As demonstrated by a receipt of payment from the Second District Court, Claimant filed action against Nonpaying Party on December 21, 2000. Therefore, for the claim to be valid, the last date of qualified services must be on or after June 24, 2000.

Claimant advances July 3, 2000 as the last date of qualified services based on the argument that under UTAH ADMINISTRATIVE RULE R156-38-204d(9)(b) (2001) the Division must accept the last date of qualified services as set forth in the Findings of Fact and Conclusions of Law appended with the judgment in support of the claim. Those findings read, in relevant part, as follows:

4. Brandenburg contracted with plaintiff for plaintiff to provide building materials and labor on each of said premises and agreed to pay plaintiff as follows:

- a. The sum of \$2,563.97 on or about the 3rd day of July 2000, for the Fellows property;
- b. The sum of \$4,544.07 on or about the 3rd day of July 2000, for the Dickson property; and
- c. The sum of \$5,288.09 on or about the 3rd day of July 2000, for the Edwards property.

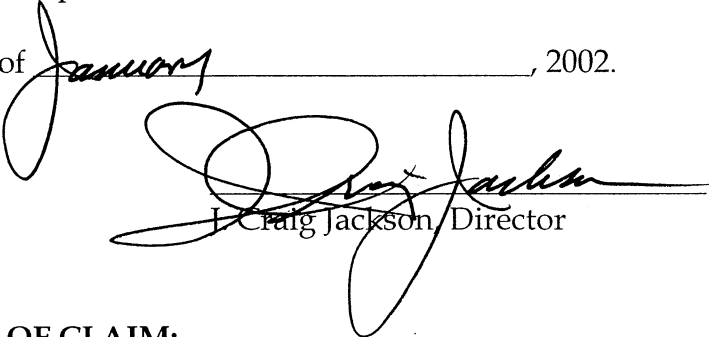
5. Said materials and labor were delivered and performed by plaintiff on each of the premises and were accepted by each of the defendants.

The Director finds that a careful reading of this language shows the court determined payment was due on July 3, 2000 but made no finding as to when the services were actually performed. Therefore, the Director rejects this argument in support of July 3, 2000 as the last date qualified services were provided.

Having rejected Claimant's argument in support of July 3, 2000 as the last date of qualified services, the Director is forced to refer to the other documents in the claim. Specifically, the Director looks to the Work In Process ticket Claimant submitted as proof it provided qualified services to Nonpaying Party as part of the construction of the incident residence. That ticket clearly shows the materials were installed on or about **April 11, 2001 – 254 days prior to the civil action filing date**. Consequently, Claimant has failed to meet the filing deadline required by UTAH CODE ANN. § 38-11-204(3)(c)(i)(A).

WHEREFORE, the Director of the Division of Occupational and Professional Licensing orders that the above-encaptioned claim is denied.

DATED this 22nd day of January, 2002.


Craig Jackson, Director

CHALLENGE AFTER DENIAL OF CLAIM:

Under the terms of UTAH ADMINISTRATIVE CODE, § R156-46b-202(j) (1996), this claim has been classified by the Division as an informal proceeding. Claimant may challenge the denial of the claim by filing a request for agency review within 30 days of the date of this order. **(Procedures regarding requests for agency review are attached with Claimant's copy of this Order).**

Claim Amt. : \$6,113.16 Initial Entry Date : 09/27/2001

Claimant : Whitewater Whirlpool Baths & Systems

Property Desc. : See Comments

Property Addr. : 62 Hillsborough Dr

Pleasant View, UT 84414

STATUS : PENDING (SECTION REVIEW)

Comments Page: 001 UserID: kschwab

Lot A108 Pleasant Meadows

Associated Addresses

Type : Claimant Legal Counsel

DOPL # : - -

Firm Nm :

Name : Dr. Howard Chuntz Esq

1149 W Center St

Orem, UT 84057

(801) 222-9700

Type : Claimant Address

DOPL # : 22-235825-5501

Firm Nm : Whitewater Whirlpool Baths & System

Name : Kirk Williamson

195 S Geneva Road

Lindon, UT 84042

(801) 785-3554

Type : Home Owner - Secondary

DOPL # : - -

Firm Nm :

Name : Teresa Dickson

62 Hillsborough Dr

Pleasant View, UT 84414

() -

Type : Home Owner - Primary

DOPL # : - -

Firm Nm :

Name : Joel Dickson

62 Hillsborough Dr

Pleasant View, UT 84414

() -

Type : Non-Paying Party - Primary

DOPL # : 00-351159-5501

Firm Nm : Brandenburg Development & Consultin

Name :

c/o 57 W 200 S #350

Salt Lake City, UT 84101

() -

Type : Original Contractor/Developer

DOPL # : 00-351159-5501

Firm Nm : Brandenburg Development & Consultin

Name :

c/o 57 W 200 S #350

Salt Lake City, UT 84101

() -

DEMOGRAPHIC INFORMATION

Claim #: LRF-2001-0927-02 Claimant: Whitewater Whirlpool Baths & S

DOPL Licensee: yes

Entity Type: Joint Venture

Number of Employees: 100+

Gross Annual Revenue: 5M AND UP

Years In Business: 20-49

Claiming Capacity: Subcontractor

NON-PAYING PARTY

DOPL Licensee: no

Entity Type:

===== CLAIMS PROCESSING INFO =====

	Date Recieved	Date Forwarded
Front Desk	09/27/2001	
Permissive Party Response	10/27/2001	DEADLINE*****

Comments Page: 001 UserID: kschwab

Certified: 7000 1530 0004 7602 3918

Screen C/D Letter	11/21/2001	
Claimant Response C/D Letter	12/12/2001	12/21/2001
Substantive Review	12/17/2001	

Comments Page: 001 UserID: chris

From the information included in the claim, the complaint filed by the claimant was beyond the 180 day deadline when the last date of qualified services were performed. From the invoices included the last date of qualified services was 5/9/00, and the complaint was filed on 12/21/00. This equals 226 days.

Claim Disposition

Deny

Comments

Page: 001

UserID: chris

Claim is incomplete for the following reasons:

1.Claim has a jurisdictional flaw and does not meet the 180 day deadline where the civil action was filed within the timeline of last performing the qualified services. See jurisdictional checklist for complete explanation.

2. The Motion and Order for Supplemental Proceedings was issued and served on 5/15/01, and 6/12/01. The judgment the claimant received against the nonpaying party was entered on 9/10/01. See Required Factual Findings for explanation.

Board Disposition

?

JURISDICTIONAL CHECKLIST =====

Completion Of QS 05/17/2000

Civil Bkcy Filing 12/21/2000

Difference 218

Comments

Page: 001

UserID: chris

Claimant has conclusively demonstrated that the complaint was filed December 21, 2000. Therefore, to qualify for payment, the claimant must have last provided services on or before June 24, 2000.

From the invoices included the last date of qualified services was 5/9/00, (although there is mention of invoice number 746135 dated on this residence as 5/17/00) and the complaint was filed on 12/21/00.

Regardless of whether the invoice date was 5/9/00 or 5/17/00 the qualified services were performed at least 218 days from when the complaint was filed on this property.

Claimant asserts July 3 as the last date of qualified service and supports that assertion by referring to the judgment findings. Those findings read, in relevant part:

"4. Brandenburg contracted with plaintiff for plaintiff to provide building materials and labor on each of said premises and agreed to pay plaintiff as follows:

a. The sum of \$2,563.97 on or about the 3rd day of July 2000, for the Fellows property;"

"5. Said materials and labor were delivered and performed by plaintiff on each of the premises and were accepted by each of the defendants."

The Fund believes a careful reading of this will obviate that the court found that the payment was due on July 3 but entered not finding whatsoever as to when the qualified services were actually provided.

The Fund recommends denial of this claim because this deadline has not been met and claim has a jurisdictional flaw.

Civil Judg/Bkcy Filing	09/10/2001		
LRF App Filing	09/27/2001		
Difference	17		
Comments Page: 001 UserID: chris			
Judgment included in claim to show the date the judgment was entered, and the claim filing date was well within the 1 year deadline.			
===== COMPLETE APPLICATION CHECK-LIST =====			
Form Submitted	Yes	09/27/2001	
Form Completed	Inc	12/17/2001	
Fee	Yes	09/27/2001	4244-1 - ICN
Signed Cert/Aff	Yes	09/26/2001	
Cert of Service	Yes	09/26/2001	
Demog. Questionnaire	Yes	09/27/2001	
===== SUPPORTING DOCUMENTS =====			
Written Contract	Yes	Civil Finding	09/10/2001
Licensing Statute	Yes	License	05/12/1998
Full Payment	Yes	Civil Finding	09/10/2001
Civil Action/Bankrupt	Yes	Complaint	12/21/2000
Entitlement to Pmt.	Yes	Civil Judgment	09/10/2001
Exhaust Remedies	Yes	SO/RS/WE/RE	09/10/2001
===== REQUIRED FACTUAL FINDINGS CHECK-LIST =====			
Claimant Qualified Beneficiary	Yes		
Comments Page: 001 UserID: chris			
Claimant is active with the Fund and has been since 7/17/95.			
Written contract exists	Yes		
Comments Page: 001 UserID: chris			
The Findings of Fact and Conclusions of Law included in the claim does state that there was a written contract between the original contractor and the homeowner, but the Fund does not have a signed copy from the Judge of these Findings.			
Original Contractor Licensed	Yes		
Comments Page: 001 UserID: chris			
Original contractor's license was active from 5/12/98 to 7/31/01 with license # 353159.			
Owner PIF to Contractor	Yes		
Page: 4			

Comments	Page: 001	UserID: chris
The Findings of Fact and Conclusions of Law included in the claim does state that the homeowner paid Brandenburg in full for the sums due on the original contract between this defendant and all sums due on any amendments to said contract. But the Fund does not have a signed copy from the Judge of these Findings.		
Comments	Page: 002	UserID: chris
The Findings of Fact and Conclusions of Law included in the claim does state that the homeowner paid Brandenburg in full for the sums due on the original contract between this defendant and all sums due on any amendments to said contract. But the Fund does not have a signed copy from the Judge of these Findings.		
Residence Own/Occ as defined	Yes	
Comments	Page: 001	UserID: chris
Per owner occupied residence affidavit signed by the homeowner included in the claim.		
Residence Single Family/Duplex	Yes	
Comments	Page: 001	UserID: chris
Per owner occupied residence affidavit signed by the homeowner included in the claim.		
Contract For QS	Yes	
Comments	Page: 001	UserID: chris
Invoices included in this claim show that the claimant provided materials to the NPP for this specific residence.		
Claimant brought Civil Action	Yes	
Comments	Page: 001	UserID: chris
Judgment was included in the claim verifying the claimant did obtain judgment against the NPP, but this judgment also needs to be signed by the judge.		
Exhausted Remedies	Inc	
Comments	Page: 001	UserID: chris
A Motion and Order for Supplemental Proceedings against the NPP was included in the claim and it was issued 5/25/01. Also included was the Constable's proof of service that this was served on the NPP on 6/12/01. All of this was done before the date the judgment was entered (9/10/01).		
In reference to R156-38-204a (6) (a): "A copy of a supplemental order issued following the civil judgment entered in favor of claimant and a copy of the return of service..."		
This information was not issued following the date of the civil judgment, but was in fact issued about 3 months prior to the judgment date.		
Page: 5		

Adequate \$ in LRF Fund Yes
Statutory Limit/Payment no

Comments Page: 001 UserID: chris

Claims paid on this residence to date: \$0

Un-reimbursed Payments no

Comments Page: 001 UserID: chris

To date Fund has paid \$0 of claims on behalf of claimant and has received \$0 of reimbursements.

===== PAYMENT CHECKLIST =====

	Apportioned %	Claimed
	100.00	
Principal Amount	0.00	4,544.07
Pre Attorney Fees	0.00	557.24
Pre Costs	0.00	105.04
Pre Int. % 0.00	0.00	105.04
Post Attorney Fees	0.00	150.00
Post Costs	0.00	44.00
Post Int. % 0.00	0.00	0.00
Total	0.00	6,082.16

QUALIFIED SERVICES COMMENT

Comments Page: 001 UserID: chris

Judgment awarded to claimant against NPP in the gross amount of \$12,396.13. The amount for this specific residence was outlined in the Findings of Fact, but the 2 invoices included do not total the amount shown on that Finding of Fact.

PRE JUDGEMENT ATTORNEY FEE COMMENT

Comments Page: 001 UserID: chris

The total amount of attorney's fees awarded in the judgment was \$1,522.50. The fees for this property were allocated according to the qualified services amount (see attached allocation schedule).
(The amounts allocated were for the full amount listed on the findings of fact).

PRE JUDGEMENT COSTS COMMENT

Comments Page: 001 UserID: chris

The total amount of costs awarded in the judgment was \$287.00. The costs for this property were allocated according to the qualified services amount (see attached allocation schedule).
(The amounts allocated were for the full amount listed on the findings of fact).

PRE JUDGEMENT INTEREST COMMENT

Comments Page: 001 UserID: chris

Interest calculated at 12% pursuant to UCA 38-11-203 (3) (c). Interest has not yet been calculated because still trying to find out when the payment due date was, and for what amount.

POST JUDGEMENT ATTORNEY COMMENT

Comments Page: 001 UserID: chris

The post judgment attorney fees have been documented and included in the claim. The amount claimed is for the preparation of the application.

POST JUDGEMENT COSTS COMMENT

Comments Page: 001 UserID: chris

The post judgment costs have been documented and included in the claim. The amount claimed (\$44.00) is for the Service of Process on the Supplemental Order, and the other \$75.00 is the filing fee with Lien Recovery. According to 38-11-203 (d) " . . .The claim application fee as established by the division pursuant to Subsection 38-11-204 (1) (b) is not a reimbursable cost." The \$44.00 is allocated among the three properties (see attached allocation schedule).

POST JUDGEMENT INTEREST COMMENT

NO Disposition Checklist Information

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF THE LIEN RECOVERY:	ORDER
FUND CLAIM OF WHITEWATER	:
WHIRLPOOL BATHS & SYSTEMS, INC.	:
("CLAIMANT") REGARDING THE	:
CONSTRUCTION BY BRANDENBURG	:
DEVELOPMENT & CONSULTING, LLC	:
("NONPAYING PARTY") ON THE	:
RESIDENCE OF JOEL & TERESA DIXON	:
("HOMEOWNER")	:

Pursuant to the requirements for a disbursement from the Lien Recovery Fund set forth in UTAH CODE ANN. § 38-11-203(3) (2001) and being apprized of all relevant facts, the Director of the Division of Occupational and Professional Licensing finds that the claimant has not complied with the requirements of UTAH CODE ANN. §§ 58-1-301(2)(d) (1997) and 38-11-204(3)(c)(i)(A) (2001).

This claim was originally filed on September 27, 2001. On November 21, 2001 the Division completed its first review of the claim. That review found several deficiencies in the claim. Therefore, the Division issued a Notice of Incomplete or Insufficient Claim Application outlining the defects in the claim and giving Claimant until December 21, 2001 to correct those defects. On December 12, 2001 the Division received Claimant's response to the Notice. The Division reviewed Claimant's response to the Notice and found the response did not cure all of the defects with the claim. Therefore, the Division issued a second Notice outlining the remaining deficiencies and granting

Claimant until January 18, 2002 to respond. Both Notices included the following warning:

Failure to Provide Required Information: If we receive the needed information, we will process your claim as expeditiously as possible. If we do not receive the needed information, on or before the Response Due Date shown above the claim will be denied. (emphasis as in original)

As of January 22, 2002 the Division has received no response from Claimant with respect to the second Notice.

The Division's Notices include firm response deadlines as a means of ensuring compliance with UTAH CODE ANN. § 58-1-301(2)(d), which reads:

A written notice of incomplete application and conditional denial of licensure shall be provided to an applicant who submits an incomplete application. This notice shall advise the applicant that the application is incomplete and that **the application is denied, unless the applicant corrects the deficiencies within the time period specified in the notice** and otherwise meets all qualifications for licensure. (emphasis added)

While a claim against the Fund is not, technically, an application for licensure the principle of judicial economy strongly encourages the Division to process claim applications in a manner indistinguishable for the processing of licensure applications. To do otherwise would impose upon the Division redundant processes and excess expenses that could not be justified. As such, this section clearly applies to the processing of claims against the Fund. Therefore, because Claimant did not respond to the second Notice the claim the conditional denial of the claim is rendered final.

Because Claimant did not respond to the second Notice, the claim retains unresolved defects. Specifically, Claimant has failed to demonstrate compliance with Utah Code Ann. § 38-11-204(3)(c)(i)(A), which reads:

To recover from the fund, . . . a qualified beneficiary shall establish that . . . the qualified beneficiary filed an action against the nonpaying party to recover monies owed him within 180 days from the date the qualified beneficiary last provided qualified services, unless precluded from doing so by the nonpaying party's bankruptcy filing within the 180 days after completion of services. (emphasis added)

The claim documents present two possible dates as the "date the qualified beneficiary last provided qualified services." The earlier date is April 11, 2000; the latter is July 3, 2000. As demonstrated by a receipt of payment from the Second District Court, Claimant filed action against Nonpaying Party on December 21, 2000. Therefore, for the claim to be valid, the last date of qualified services must be on or after June 24, 2000.

Claimant advances July 3, 2000 as the last date of qualified services based on the argument that under UTAH ADMINISTRATIVE RULE R156-38-204d(9)(b) (2001) the Division must accept the last date of qualified services as set forth in the Findings of Fact and Conclusions of Law appended with the judgment in support of the claim. Those findings read, in relevant part, as follows:

4. Brandenburg contracted with plaintiff for plaintiff to provide building materials and labor on each of said premises and agreed to pay plaintiff as follows:

- a. The sum of \$2,563.97 on or about the 3rd day of July 2000, for the Fellows property;
- b. The sum of \$4,544.07 on or about the 3rd day of July 2000, for the Dickson property; and
- c. The sum of \$5,288.09 on or about the 3rd day of July 2000, for the Edwards property.

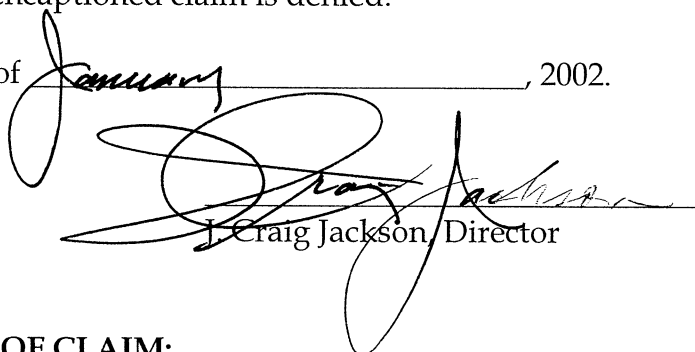
5. Said materials and labor were delivered and performed by plaintiff on each of the premises and were accepted by each of the defendants.

The Director finds that a careful reading of this language shows the court determined payment was due on July 3, 2000 but made no finding as to when the services were actually performed. Therefore, the Director rejects this argument in support of July 3, 2000 as the last date qualified services were provided.

Having rejected Claimant's argument in support of July 3, 2000 as the last date of qualified services, the Director is forced to refer to the other documents in the claim. Specifically, the Director looks to the Work In Process ticket Claimant submitted as proof it provided qualified services to Nonpaying Party as part of the construction of the incident residence. That ticket clearly shows the materials were installed on or about **May 3, 2001 – 232 days prior to the civil action filing date**. Consequently, Claimant has failed to meet the filing deadline required by UTAH CODE ANN. § 38-11-204(3)(c)(i)(A).

WHEREFORE, the Director of the Division of Occupational and Professional Licensing orders that the above-encaptioned claim is denied.

DATED this 22nd day of January, 2002.


J. Craig Jackson, Director

CHALLENGE AFTER DENIAL OF CLAIM:

Under the terms of UTAH ADMINISTRATIVE CODE, § R156-46b-202(j) (1996), this claim has been classified by the Division as an informal proceeding. Claimant may challenge the denial of the claim by filing a request for agency review within 30 days of the date of this order. **(Procedures regarding requests for agency review are attached with Claimant's copy of this Order).**